

fixed-price contracts for aircraft production, modification, maintenance, repair, or overhaul, unless—

(i) The aircraft is being acquired for a foreign military sale and the foreign government has not agreed to assume the risk; or

(ii) The cost of insurance for damage, loss, or destruction of aircraft does not exceed \$500, and the contracting officer agrees to recognize the insurance costs.

(2) If appropriate, revise the clause at 252.228-7001, Ground and Flight Risk, as follows—

(i) Include a modified definition of “aircraft” if the contract covers other than conventional types of winged aircraft, i.e., helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional aircraft. The modified definition should describe a stage of manufacture comparable to the standard definition.

(ii) Modify “in the open” to include “hush houses,” test hangars and comparable structures, and other designated areas.

(iii) Expressly define the “contractor’s premises” where the aircraft will be located during and for contract performance. These locations may include contract premises which are owned, leased, or premises where the contractor is a permittee or licensee or has a right to use, including Government airfields.

(iv) Revise paragraph (d)(iii) of the clause to provide Government assumption of risk for transportation by conveyance on streets or highways when transportation is—

(A) Limited to the vicinity of contractor premises; and

(B) Incidental to work performed under the contract.

(c)(1) Use the clause at 252.228-7002, Aircraft Flight Risk, in cost reimbursement contracts—

(i) For the development, production, modification, maintenance, repair, or overhaul of aircraft; or

(ii) Otherwise involving the furnishing of aircraft to the contractor by the Government.

(iii) With the definition of “aircraft” modified, if appropriate, to include helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional aircraft.

(2) Use the clause at 252.228-7002, Aircraft Flight Risk, appropriately modified, in fixed price contracts when—

(i) The clause at 252.228-7001, Ground and Flight Risk, is not used; and

(ii) Contract performance involves the flight of Government furnished aircraft.

(d) The clause at 252.228-7003, Capture and Detention, may be used when contractor employees are subject to capture and detention and may not be covered by the War Hazards Compensation Act (42 U.S.C. 1701 *et seq.*).

(e) The clause at 252.228-7005, Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, may be used in solicitations and contracts which involve the manufacture, modification, overhaul, or repair of these items.

(f) Use the clause at 252.228-7006, Compliance with Spanish Laws and Insurance, in solicitations and contracts for services or construction to be performed in Spain, unless the contractor is a Spanish concern.

[56 FR 36404, July 31, 1991, as amended at 57 FR 42631, Sept. 15, 1992; 62 FR 34125, June 24, 1997; 63 FR 69006, Dec. 15, 1998]

## PART 229—TAXES

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36405, July 31, 1991, unless otherwise noted.

**Subpart 229.1—General****229.101 Resolving tax problems.**

(a) Within DoD, the agency-designated legal counsels are the defense agency General Counsels, the General Counsels of the Navy and Air Force, and for the Army, the Chief, Contract Law Division, Office of the Judge Advocate General.

(c) The contracting officer may direct the contractor to litigate the applicability of a particular tax if—

(i) The contract is either a cost reimbursement type or a fixed price type with a tax escalation clause; and

(ii) The direction is coordinated with the agency-designated legal counsel through the DoD Tax Policy and Advisory Group.

(d)(i) Tax relief agreements between the United States and foreign governments in Europe that exempt the United States from payment of specific taxes on purchases made for common defense purposes are maintained by the United States European Command (USEUCOM). For further information contact HQ USEUCOM, ATTN: ECLA, Unit 30400, Box 1000, APO AE 09128; Telephone: DSN 430-8001/7263, Commercial 49-0711-680-8001/7263; Telefax. 49-0711-680-5732.

(ii) Tax relief also may be available in countries that have not signed tax relief agreements. The potential for such relief should be explored in accordance with paragraph (d)(iii) of this section.

(iii) Review DoDD 5100.64, Department of Defense Foreign Tax Relief Program, before contracting with a foreign source. Refer questions on implementation of the program to the Commanding Officers in Table 29-1, Designated Commanding Officers, which have been designated under subsection E.7 of DoDD 5100.64 to serve as—

(A) Single point of contact for U.S. contracting offices for investigation and resolution of specific foreign tax relief matters; and

(B) Liaison with responsible diplomatic mission and local foreign tax authorities.

(iv) Refer foreign tax relief questions which have not been resolved by the designated Commanding Officer to the agency-designated legal counsel.

(v) When an acquisition is for a contract to be performed in a country or area listed in Table 29-1, Designated Commanding Officers—

(A) Obtain from the designated Commanding Officer detailed information concerning the taxes and duties from which the Government of the United States is exempt, and

(B) Provide the information to prospective offerors.

(C) Do not provide prospective offerors any other information about foreign taxes or duties.

(D) Issue tax exemption certificates, as appropriate, to assist the contractor in obtaining relief from foreign taxes and duties which were excluded from the contract price.

(E) Seek advice and assistance from the designated Commanding Officer and, if necessary, the agency-designated legal counsel if the contractor notifies the contracting officer that it has been assessed a tax or duty by a foreign government which could increase the contract price.

(vi) Also see subpart 229.70 for special procedures for obtaining tax relief and duty-free import privileges when conducting U.S. Government acquisitions in certain foreign countries.

**TABLE 29-1—DESIGNATED COMMANDING OFFICERS**

Country or area	Designated commanding officer
Australia ....	Commander in Chief, Pacific Representative, Australia.
Azores .....	Commander, U.S. Forces, Azores.
Bahrain .....	Commander in Chief, U.S. Naval Forces, Europe.
Belgium .....	Commander in Chief, U.S. Army, Europe.
Bermuda ....	Commanding Officer, U.S. Naval Air Station, Bermuda.
Canada .....	Commander, Space Command.
Caribbean Islands (including Bahamas).	Commander, Antilles Defense Command.
Denmark ....	Commander in Chief, U.S. Air Forces, Europe.
Ethiopia .....	Commander in Chief, U.S. Army, Europe.
France .....	Commander in Chief, U.S. Army, Europe.
Germany ....	Commander in Chief, U.S. Army, Europe.
Greece .....	Commander in Chief, U.S. Air Forces, Europe.
Greenland ..	Commander, Space Command.
Iceland .....	Commander, Iceland Defense Force.
Iran .....	Commander in Chief, U.S. Army, Europe.
Italy .....	Commander in Chief, U.S. Naval Forces, Europe.
Japan .....	Commander, U.S. Forces, Japan.
Korea .....	Commander, U.S. Forces, Korea.
Luxembourg ..	Commander in Chief, U.S. Army, Europe.
Morocco .....	Commander in Chief, U.S. Naval Forces, Europe.

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TABLE 29-1—DESIGNATED COMMANDING OFFICERS—Continued

Country or area	Designated commanding officer
Netherlands	Commander in Chief, U.S. Air Forces, Europe.
New Zealand	Commander, U.S. Naval Support Forces, Antarctica.
Norway .....	Commander in Chief, U.S. Air Forces, Europe.
Philippines	Commander in Chief, Pacific Representative, Philippines.
Portugal .....	Commander in Chief, U.S. Naval Forces, Europe.
Spain .....	Commander in Chief, U.S. Air Forces, Europe.
Taiwan .....	Commander, U.S. Military Assistance Command, Thailand.
Turkey .....	Commander in Chief, U.S. Air Forces, Europe.
United Kingdom	Commander in Chief, U.S. Air Forces, Europe.

[56 FR 36405, July 31, 1991, as amended at 62 FR 34125, June 24, 1997; 63 FR 11535, Mar. 9, 1998]

### Subpart 229.4—Contract Clauses

SOURCE: 62 FR 34125, June 24, 1997, unless otherwise noted.

#### 229.402 Foreign contracts.

##### 229.402-1 Foreign fixed-price contracts.

Use the clause at 252.229-7000, Invoices Exclusive of Taxes or Duties, in solicitations and contracts when a fixed-price contract will be awarded to a foreign concern.

##### 229.402-70 Additional clauses.

(a) Use the clause at 252.229-7001, Tax Relief, in solicitations and contracts when a contract will be awarded to a foreign concern in a foreign country. When contract performance will be in Germany, use the clause with its Alternate I.

(b) Use the clause at 252.229-7002, Customs Exemptions (Germany), in solicitations and contracts requiring the import of U.S. manufactured products into Germany.

(c) Use the clause at 252.229-7003, Tax Exemptions (Italy), in solicitations and contracts when contract performance will be in Italy.

(d) Use the clause at 252.229-7004, Status of Contractor as a Direct Contractor (Spain), in solicitations and contracts requiring the import into Spain of supplies for construction, development, maintenance, or operation

of Spanish-American installations and facilities.

(e) Use the clause at 252.229-7005, Tax Exemptions (Spain), in solicitations and contracts when contract performance will be in Spain.

(f) Use the clause at 252.229-7006, Value Added Tax Exclusion (United Kingdom), in solicitations and contracts when contract performance will be in the United Kingdom.

(g) Use the clause at 252.229-7007, Verification of United States Receipt of Goods, in solicitations and contracts when contract performance will be in the United Kingdom.

(h) Use the clause at 252.229-7008, Relief from Import Duty (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom.

(i) Use the clause at 252.229-7009, Relief from Customs Duty and Value Added Tax on Fuel (Passenger Vehicles) (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom for fuels (gasoline or diesel) and lubricants used in passenger vehicles (excluding taxis).

(j) Use the clause at 252.229-7010, Relief from Customs Duty on Fuel (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom that require the use of fuels (gasoline or diesel) and lubricants in taxis or vehicles other than passenger vehicles.

### Subpart 229.70—Special Procedures for Overseas Contracts

SOURCE: 62 FR 34125, June 24, 1997, unless otherwise noted.

#### 229.7000 Scope of subpart.

This subpart prescribes procedures to be used by contracting officers to obtain tax relief and duty-free import privileges when conducting U.S. Government acquisitions in certain foreign countries.

##### 229.7001 Tax exemption in Spain.

(a) The Joint United States Military Group (JUSMG), Spain Policy Directive 400.4, or subsequent directive, applies to U.S. contracting offices acquiring supplies or services in Spain when

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the introduction of material or equipment into Spain is required for contract performance.

(b) Upon award of a contract with a Direct Contractor, as defined in the clause at 252.229-7004, the contracting officer will notify JUSMG-MAAG Madrid, Spain, and HQ 16AF/LGTT and forward three copies of the contract to JUSMG-MAAG, Spain.

(c) If copies of the contract are not available and duty-free import of equipment or materials is urgent, the contracting officer will send JUSMG-MAAG three copies of the Letter of Intent or a similar document indicating the pending award. In these cases, authorization for duty-free import will be issued by the Government of Spain. Upon formal award, the contracting officer will forward three copies of the completed contract to JUSMG-MAAG, Spain.

(d) The contracting officer will notify JUSMG-MAAG, Spain, and HQ 16AF/LGTT of ports-of-entry and identify the customs agents who will clear property on their behalf. Additional documents required for port-of-entry and customs clearance can be obtained by contacting HQ 16AF/LGTT. This information will be passed to the Secretaria General Tecnica del Ministerio de Hacienda (Technical General Secretariat of the Ministry of Finance). A list of customs agents may be obtained from the 600 ABG, APO AE 90646.

### 229.7002 Tax exemption in the United Kingdom.

This section contains procedures to be followed in securing relief from the British value added tax and import duties.

#### 229.7002-1 Value added tax.

(a) U.S. Government purchases qualifying for tax relief are equipment, materials, facilities, and services for the common defense effort and for foreign aid programs.

(b) To facilitate the resolution of issues concerning specific waivers of import duty or tax exemption for U.S. Government purchases (see 229.7002-3), contracting offices shall provide the name and activity address of personnel who have been granted warranted con-

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tracting authority to Her Majesty's (HM) Customs and Excise at the following address: HM Customs and Excise, International Customs Division G, Branch 4, Adelaide House, London Bridge, London EC4R 9DB.

### 229.7002-2 Import duty.

No import duty shall be paid by the United States and contract prices shall be exclusive of duty, except when the administrative cost compared to the low dollar value of a contract makes it impracticable to obtain relief from contract import duty. In this instance, the contracting officer shall document the contract file with a statement that—

(a) The administrative burden of securing tax relief under the contract was out of proportion to the tax relief involved;

(b) It is impracticable to secure tax relief;

(c) Tax relief is therefore not being secured; and

(d) The acquisition does not involve the expenditure of any funds to establish a permanent military installation.

### 229.7002-3 Value added tax or import duty problem resolution.

In the event a value added tax or import duty problem cannot be resolved at the contracting officer's level, refer the issue to HQ Third Air Force, Staff Judge Advocate, Unit 4840, Box 45, APO AE 09459. Direct contact with HM Customs and Excise in London is prohibited.

### 229.7002-4 Information required by HM Customs and Excise.

(a) *School bus contracts.* Provide one copy of the contract and all modifications to HM Customs and Excise.

(b) *Road fuel contracts.* For contracts that involve an application for relief from duty on the road fuel used in performance of the contract, provide—

(1) To HM Customs and Excise—

(i) Contract number;

(ii) Name and address of contractor;

(iii) Type of work (e.g., laundry, transportation);

(iv) Area of work; and

(v) Period of performance.

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(2) To the regional office of HM Custom and Excise to which the contractor applied for relief from the duty on road fuel—copy of the contract.

(c) *Other contracts awarded to United Kingdom firms.* Provide information when requested by HM Customs and Excise.

### PART 230—COST ACCOUNTING STANDARDS ADMINISTRATION

#### Subpart 230.2—CAS Program Requirements

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#### Subpart 230.70—Facilities Capital Employed for Facilities in Use

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230.7102 Determining imputed cost of money.

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36406, July 31, 1991, unless otherwise noted.

#### Subpart 230.2—CAS Program Requirements

##### 230.201-5 Waiver.

(a)(1)(A) The military departments—  
(1) May grant CAS waivers that meet the conditions in FAR 30.201-5(b); and

(2) Unless otherwise authorized by the Director of Defense Procurement and Acquisition Policy, Office of the

Under Secretary of Defense (Acquisition, Technology, and Logistics), must submit each CAS waiver request to the Director of Defense Procurement and Acquisition Policy for review at least 14 days before granting the waiver.

(B) DoD contracting activities that are not within a military department must submit CAS waiver requests that meet the conditions in FAR 30.201-5(b) to the Director of Defense Procurement and Acquisition Policy for approval at least 30 days before the anticipated contract award date.

(2) The military departments must not delegate CAS waiver authority below the individual responsible for issuing contracting policy for the department.

(e)(i) by November 15th of each year, the military departments must provide a report of all waivers granted under FAR 30.201-5(a) during the previous fiscal year to the Director of Defense Procurement and Acquisition Policy.

(ii) The Director of Defense Procurement and Acquisition Policy will submit a consolidated DoD report to the CAS Board.

[65 FR 36035, June 6, 2000, as amended at 68 FR 7440, Feb. 14, 2003]

#### Subpart 230.70—Facilities Capital Employed for Facilities in Use

##### 230.7000 Contract facilities capital estimates.

(a) The contracting officer will estimate the facilities capital cost of money and capital employed using—

(1) An analysis of the appropriate Forms CASB-CMF and cost of money factors; and

(2) DD Form 1861, Contract Facilities Capital Cost of Money.

##### 230.7001 Use of DD Form 1861.

##### 230.7001-1 Purpose.

The DD Form 1861 provides a means of linking the Form CASB-CMF and DD Form 1547, Record of Weighted Guidelines Application. It—

(a) Enables the contracting officer to differentiate profit objectives for various types of assets (land, buildings, equipment). The procedure is similar